

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
GREATER BOSTON POLICE COUNCIL	)	File No. 0005638438
	)	
Request for Waiver of the T-Band Suspension	)	
Notice	)	

**ORDER**

**Adopted: June 12, 2013**

**Released: June 12, 2013**

By the Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. On February 7, 2013 the Greater Boston Police Council (GBPC) filed a new application for permanent authorization and a waiver request to be licensed on two “T-Band” UHF frequency pairs at five locations.<sup>1</sup> The application seeks a license for facilities previously authorized under call sign KYO955, which was not renewed due to administrative error on the licensee’s part. For the reasons set forth, we grant GBPC’s waiver request.

**II. BACKGROUND**

2. On February 22, 2012, the President signed the Middle Class Tax Relief and Job Creation Act of 2012 (Public Safety Spectrum Act) into law.<sup>2</sup> Section 6103 of the Public Safety Spectrum Act provides that, not later than nine years after the date of enactment, the Commission shall reallocate T-Band spectrum “currently used by public safety eligibles.”<sup>3</sup> On April 26, 2012, the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau (Bureaus) issued a public notice announcing a limited suspension of the acceptance and processing of certain T-Band applications.<sup>4</sup> The *Suspension Notice* suspended the acceptance and processing of T-Band applications in order “to stabilize the existing spectral landscape while the Commission considers issues surrounding future use of the T-Band, solicits input from interested parties, and works to implement the directives of the Act.”<sup>5</sup> In the *Suspension Notice*, the Bureaus stated that they would no longer accept or process certain types of applications “that would, if granted, tend to increase the degree to which the 470-512

<sup>1</sup> See Statement and Waiver Request (Waiver Request) attached to File No. 0005638438 (filed Feb. 7, 2013).

<sup>2</sup> See Pub. L. No. 112-96, 126 Stat. 156 (2012) (Public Safety Spectrum Act).

<sup>3</sup> Public Safety Spectrum Act, § 6103(a). The Act further instructs the Commission to “begin a system of competitive bidding under Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) to grant new initial licenses for the use of the spectrum.” *Id.* It also provides that “relocation of public safety entities from the T-Band Spectrum” shall be completed not later than two years after completion of the system of competitive bidding. *Id.*, §§ 6103(b), (c).

<sup>4</sup> Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Suspend the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum, *Public Notice*, 27 FCC Rcd 4218 (WTB/PSHSB 2012) (*Suspension Notice*).

<sup>5</sup> *Id.*

MHz band currently is licensed,” including applications that add locations.<sup>6</sup> Among these types of applications are those for “new licenses.”<sup>7</sup> On June 7, 2012, the Bureaus issued a subsequent public notice to clarify that “applications that seek to add or change locations are suspended only if the new location extends the station’s authorized interference contour in any direction.”<sup>8</sup>

3. Here, GBPC argues that “this application will not undermine a stable spectral landscape. The infrastructure equipment supporting the BAPERN [Boston Area Police Emergency Radio Network] system has been deployed.”<sup>9</sup> GBPC submits that “[v]irtually all the tower sites involved also support other law enforcement and fire T-Band based communications and reflect the integrated character of BAPERN with local emergency service agencies.”<sup>10</sup> GBPC adds that “[t]he overall BAPERN T-Band subscriber equipment base is substantial as its intention is to provide a communications base to all agencies, some of which may be dispatched from considerable distance.”<sup>11</sup> Further, GBPC submits that “[r]einstating the authority does not encroach upon the Commission reallocating the 470-512 MHz band to commercial services.”<sup>12</sup>

4. Additionally, GBPC claims that “[t]hese frequencies and sites are within BAPERN’s 11 T-Band channels and provide coverage encompassing a large geography and significant population.”<sup>13</sup> GBPC states that “[t]he member jurisdictions have made substantial capital investment as has the federal government.”<sup>14</sup> “The channels subject to this application are critical to maintain interoperability and overall communications for law enforcement and other emergency services throughout the Commonwealth.”<sup>15</sup> GBPC states that “470.5625 [MHz] and 470.7875 MHz are part of a comprehensive deployment providing improved emergency preparedness and response.”<sup>16</sup>

5. In support of its waiver request, GBPC argues that “Public Law 112-96 does not preclude modifications to public safety licensees in the 470-512 MHz band segment nor does it dilute in any way the Commission’s historic commitment to improve public safety communications.”<sup>17</sup> GBPC further claims that GBPC’s use of these UHF channels “will not inhibit the Commission’s discretion under section 6103 of Public Law 112-96 to preserve the spectrum landscape or manage the radio spectrum.”<sup>18</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Clarify Suspension of the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum, *Public Notice*, 27 FCC Rcd 6087, 6088 (WTB/PSHSB 2012) (*Clarification Notice*).

<sup>9</sup> Waiver Request at 2.

<sup>10</sup> *Id.* at 2-3.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

### III. DISCUSSION

6. To obtain a waiver, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>19</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>20</sup>

7. We find that the underlying purpose of the *Suspension Notice* would not be served by its application in this case. “[T]he intent of [the suspension] is to foster a stable spectral landscape while the Commission determines how to implement the [Public Safety Spectrum] Act.”<sup>21</sup> The suspension, however, “does not apply to applications that would not destabilize the licensing landscape, including . . . applications to renew existing licenses without modification[.]”<sup>22</sup> In light of the Public Safety Spectrum Act and in accordance with the *Suspension Notice*, we find that, if granted, GBPC’s application would not increase the degree to which the T-Band was licensed at the time of the *Suspension Notice* because the application seeks authority to continue to operate on the same frequencies and in accordance with the same parameters under which it was authorized to operate at that time.<sup>23</sup> GBPC claims that its failure timely to renew its license was attributable to a personnel change.<sup>24</sup> While GBPC could have sought to reinstate and seek renewal of its now expired license, an inadvertent failure to renew a license in a timely manner due to changing personnel is not so unique and unusual in itself as to warrant a waiver of the Commission’s late-filed renewal policies.<sup>25</sup> Indeed, under such circumstances, the staff has denied waiver requests and dismissed late-filed renewal applications without prejudice.<sup>26</sup> In those situations, however, the staff directed applicants to file new applications for cancelled licenses, as well as pursue STAs to continue operations.<sup>27</sup>

8. Here, in accordance with that procedure, GBPC obtained an STA to replace KYO955 and now seeks a waiver of the processing freeze to apply for a new license for those frequencies previously authorized under KYO955. GBPC adds that “[t]here is no difference between the footprint of KYO955

<sup>19</sup> 47 C.F.R. 1.925(b)(3)(i-ii).

<sup>20</sup> *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

<sup>21</sup> *Suspension Notice*, 27 FCC Rcd at 4219.

<sup>22</sup> *Id.* at 4221. The Bureaus also stated that applications requesting a modification, the processing of which has been suspended, will be dismissed. *Id.* at 4219 n.3. The Bureaus clarified “that a renewal/modification application filed during the filing and processing suspension that requests such a modification will be granted-in-part only with respect to the request for renewal.” *Clarification Notice*, 27 FCC Rcd at 6088.

<sup>23</sup> Under Section 1.949 of the Commission’s rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought. 47 C.F.R. § 1.949. Applicants may, however, file an application for renewal and request for waiver of the filing deadline if the renewal application is not filed in a timely manner. Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999).

<sup>24</sup> See Request for and Justification for STA attached to File No. 0005489905 (filed Nov. 13, 2012).

<sup>25</sup> See, e.g., Kenneth S. Vannan, *Letter*, 27 FCC Rcd 13597 (WTB 2012).

<sup>26</sup> *Id.* at 13598.

<sup>27</sup> *Id.*

and this application.”<sup>28</sup> Our staff confirmed that GBPC’s application would not expand the footprint of KYO955 or otherwise modify the parameters previously authorized under KYO955. As noted above, GBPC’s license was in effect at the time the *Suspension Notice* took effect on April 26, 2012.<sup>29</sup> Accordingly, we find that, if granted, the requested authorization in this instance would do no more than effectively restore GBPC’s operations to their original state with no greater encumbrance to the T-Band. We also find that waiver of our processing freeze would be in the public interest because it would maintain interoperability and overall communications for law enforcement and other emergency services in the Boston area. These channels are critical resources for the Boston Area Police Emergency Radio Network (BAPERN), whose members include over one hundred municipal, college, hospital, state, and federal agencies providing strengthened region-wide response and emergency preparedness for 3.5 million citizens.<sup>30</sup> Accordingly, GBPC’s waiver request satisfies the requirements of Section 1.925(b)(3)(i) of the rules.<sup>31</sup>

#### IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 1, 4(i), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, and 303, and Section 1.925(b)(3)(i) of the Commission’s rules, 47 C.F.R. § 1.925(b)(3)(i), the waiver request filed by the Greater Boston Police Council IS GRANTED to the extent set forth in this order.

10. IT IS FURTHER ORDERED, that the foregoing application, File No. 0005638438, SHALL BE PROCESSED.

11. This action is taken under delegated authority pursuant to Sections 0.191(f) and 0.392 of the Commission’s rules, 47 C.F.R. §§ 0.191(f) and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Zenji Nakazawa  
Deputy Chief, Policy and Licensing Division  
Public Safety and Homeland Security Bureau

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<sup>28</sup> Waiver Request at 1.

<sup>29</sup> GBPC’s license, call sign KYO955, expired May 12, 2012. The call sign was deleted from the Commission’s data base on July 14, 2012. On December 4, 2012, the Commission granted GBPC Special Temporary Authority (STA), under call sign WQQG377, to continue the operations formerly authorized under call sign KYO955. The STA, call sign WQQG377, expires on June 2, 2013.

<sup>30</sup> Waiver Request at 1, 3.

<sup>31</sup> We reiterate, as noted above, that Section 6103 of the Public Safety Spectrum Act requires the Commission to reallocate T-Band spectrum “currently used by public safety eligibles” no later than nine years after the date of enactment. See para. 2 & n.3, *supra*.